IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1930 of 2004

LR'S OF JIYA RAM & ORS
V/S
KANA RAM & ORS

Mr. RANJEET JOSHI, for the appellant / petitioner

Date of Order : 4.1.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

This appeal has been filed against the order dismissing the appellant's application filed under O.39 R.2A CPC. The matter arises in the circumstances that the learned trial court had passed the injunction order on 9.10.2003 directing to maintain the status quo, and that order was passed in presence of counsel for the defendants, apart from the fact that appellant also informed the Asstt. Engineer and Executive Engineer about the stay order. Thereafter on 16.10.2003, non-petitioner no.1 filed an application for modification of stay order, which was declined. Thereafter on 23.10.2003, new pits were excavated in khasra no.742, electric transformer was installed, cable line was laid, electric motor and electric board were installed, despite protest. According to the contemners, contemners no.6 to 10 were not made parties in the suit, then it was contended that non-petitioner no.1 had only shifted the connection from khasra no.130 to 742, and no other connection has been given. It was also contended that shifting of cable line and transformer, does not amount to disobedience of the order.

The learned trial court recorded the evidence of the parties, and found that in civil misc. Case no. 72/03, only plaintiff Kana Ram is the respondent, and the injunction application has been filed against him only, while in original suit, Kana Ram is the plaintiff, and Jiya Ram, Bhiya Ram and Manga Ram are defendants. Thus interim injunction was only against Kana Ram, and other contemners were not parties to the

suit. Thus contemners no.6 to 10 cannot be held to be guilty. Regarding contemner no.1, it was found that there is no positive evidence implicating him to be guilty of the disobedience of the order.

The learned trial court further found that shifting of connection did not amount to disobedience of the order, as after the injunction, no permanent construction has been made. Inter alia with these findings, the application for punishing the contemners for disobedience of the order, has been rejected.

All that has been contended by learned counsel for the appellant, is that the copy of the stay order was sent to the contemners no.6 to 10 and they were aware of the stay, and therefore, they were not party, but still they were proceeded against the order 39 R.2A CPC.

Suffice it to say that apart from the fact that this aspect has already been considered by the trial court, the trial court has, as noticed above, found that the act alleged to have been done, does not amount to disobedience of the injunction order. In that view of the matter, this contention does not merit any consideration.

The appeal, thus has no force, is hereby dismissed summarily.

(N P GUPTA),J.

/Srawat/